



# WISCONSIN REGULATORY DIGEST

## A Publication of the DEPARTMENT OF REGULATION AND LICENSING FOR AUCTIONEERS AND AUCTION COMPANIES

Volume 4, No. 2

March, 1999

### A Message From the Board Chair Richard O. Lust

We have moved into another licensing biennium and the continuing education requirements are now behind most of us. However, there will still be a few people who were required to take the continuing education during 1997-98, but did not do so. If they tried to renew their registration, their renewal was denied. They will not be able to renew until they do complete the education or pass the test-out exam. No doubt, a few course providers will still, on occasion, offer the continuing education courses for those who need them; however, with the low demand, few courses may be offered and auctioneers may have to take the test-out exam administered by the department by appointment. The test-out exam is administered on an as-needed basis in Madison or, possibly, in some other communities, depending on applications received by the Department. Dates are determined by the number of applications.

### THE WISCONSIN AUCTIONEER BOARD

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An exam brochure and application information can be obtained by calling the Exam Center at (608) 266-2852. The exam brochure describes the

contents of the exam and the dates, times and places where the exam will be administered. The cost is \$43.

Now, turning to another issue, I would strongly suggest that auctioneers and their cashiers change their policies, if necessary, **so that full payment and accounting for each auction is made to the seller at the time of the auction.** The Board has been hearing of situations where sellers are suspecting that their auction's totals are not correct when settlement is made days or weeks later! You are allowing yourself to be suspected of potential wrong doing if you do not give your seller a full and detailed accounting of his or her auction's gross, net expenses, etc., at the completion of the auction. The rules **do allow** you to hold funds, if necessary, for no more than 30 days. However, this does not mean that you **must** hold funds. Holding the seller's funds for any longer than is absolutely necessary and justified **is a poor business practice**, and could result in complaints from sellers who suspect you of wrong doing. Also, failure to pay all sellers within 24 hours does require you to use a trust account.

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I question why proper accounting can not be made immediately at the close of an auction.	

Trust funds are funds that you are “holding” for your seller. These funds are not yours. Common good business practices should dictate that you disburse all funds to all sellers as soon as possible after the auction. Modern clerking and cashiering practices, easily allow for prompt, efficient and correct accounting and payment of the seller’s trust funds!

Your contract should spell out, in some detail, as to when the seller will receive his or her funds and an accounting of the auction. Furthermore, payments made for contractually-agreed upon “hold funds” (for such things as feed counts/weights, acreage/yields, etc.) should be spelled out in your contract, regarding when such final payment will be released. However, only those funds in question should be held; full payment for all other items sold must be made within the 30-day limit. The sooner the better! Make sure your contract clearly covers these areas. Conduct your business in a professional manner at all times, so that you never allow yourself to fall under the scrutiny of anyone, including your seller and the Board.

### **Bidding By Sellers**

The Board has had a noticeable number of complaints relating to bidding by sellers. No doubt, many auctioneers have had their own procedures relating to such practices for many years. However, every auctioneer should take a good look at his or her procedures, just as the Board is looking at the nature of the complaints and the adequacy of the rules to address such complaints. One thing is certain: some consumers have expressed extreme displeasure about situations they have been involved in and feel that seller’s bidding has caused them to be treated unfairly.

While the Board is continuing to review how other states treat seller’s bidding, the Board’s initial reaction is that auctioneers should make it very clear in their contracts with sellers or consignors about whether the seller may bid on the merchandise. Auctioneers should also make an announcement about this matter before the auction begins.

Section 402.328 (4), Stats., says: “If the auctioneer knowingly receives a bid on the seller’s behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer’s option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.”

Should the administrative rules be beefed up in this area? That’s the question at this time. Stay tuned for more information in the next Regulatory Digest.

### **Temporary Registration Certificates**

A new registrant may obtain a temporary registration certificate without having passed the registration examination; however, this certificate is only valid for one year. During the one-year period, the person must take and pass the registration examination or the person will not be able to be registered beyond one year. The fee for the temporary registration is \$10.

At the conclusion of the temporary registration and after having passed the examination, the auctioneer must file a new application with the department and file a \$41 fee for a non-temporary registration certificate.

Auctioneers in another state who qualify for a reciprocal credential are not required to pass the Wisconsin examination. They may obtain a reciprocal registration by submitting an application and a \$100 fee.

### **Legislative Changes**

The Legislature is now back in session. The department, with the recommendation of the Board, will be seeking legislation to permit auctioneers to abbreviate “registered Wisconsin auctioneer” in their ads and to permit young people under the age of 18 to call auctions under the direct, on-site supervision of a registered auctioneer who is their parent, stepparent, grandparent, brother, sister, uncle, aunt or legal guardian. *The Legislature must pass a new law for these practices to become legal.*

### **Statistics**

Complaints received from 1/1/98 to 12/2/98 - 27

Registered auctioneers - 890

Registered auction companies - 157

### **Complaints and Investigations**

The Board closed 2 cases without discipline since the last issue of the Regulatory Digest.

**Allegation:** An auction was held on May 4, 1998. Two people were listed in the ad as the auctioneers. One was licensed in Wisconsin at the time; the other was not. On May 20, 1998, the second person was granted a temporary registration in Wisconsin.

**Conclusion:** There may have been a minor or technical violation, but a decision was made not to commence formal disciplinary action on the grounds that compliance with statutes or rules has been gained.

**Allegation:** An auctioneer met with a person to discuss a farm auction and the person signed an auction contract. Later the auctioneer learned that another auctioneer, the respondent in this case, was

advertising the auction for the same person. The two auctioneers discussed the matter, noting various issues, such as the fact that there were two contracts and one had precedence over the other. The seller did not understand that when he signed the first contract he was entering into a binding contract. He said he did not completely read the contract. He thought he was simply reserving a date and wanted to discuss the contract with his wife before making a commitment. Nevertheless, he did sign the contract before talking to his wife.

Conclusion: Close the case for No Violation. The other auctioneer was not aware of the pre-existing contract when he entered into the second contract.

### **Auctions of Real Estate**

Chapter RL 127 of the Wisconsin Administrative Code, has sections, entitled, "Auction of real estate," "Limitations," "Contract," "Real estate subject to exclusive listing contract" and "Solicitation of owners with exclusive listing contract prohibited." If you conduct auctions of real estate, you should occasionally review these rules.

The bottom line is that an auctioneer may only advertise an auction of real estate, call the auction and handle the sales proceeds. Unless the auctioneer is also a licensed real estate agent, the auctioneer may not prepare any contracts or other documents necessary to transfer title to real estate.

Occasionally the board receives questions about whose name must be in an ad for an auction of real estate. Ideally, the name of both the real estate broker and the auctioneer (and the auction company, if there is one) should be in the ad and each should follow the advertising rules which apply to his or her license or registration.

### **Firearms**

Here are two conclusions, expressed by the Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms:

Held: Persons who conduct estate-type auctions at which the auctioneer assists the estate in selling the estate's firearms, and the firearms are possessed and transferred by the estate, do not require a Federal firearms license.

Held further: Persons who regularly conduct consignment-type auctions, for example, held every 1-2 months, where the auctioneer takes possession of the firearms pursuant to a consignment contract giving the auctioneer the exclusive right and authority to sell the firearms at a location, time and date to be selected by the auctioneer and providing for a commission to be paid upon sale are required to

obtain a license as a dealer in firearms pursuant to 18 U.S.C. s. 923 (a).

Questions about firearms may be directed to Special Inspector Casimir Mleczko at (414) 297-3991.

### **Goals of the Board**

The Auctioneer Board continues to meet regularly and has the following goals for 1999:

1. To screen complaints against registrants in a timely manner and to move investigations along as quickly as possible. Complaints are screened once a month.
2. To render meaningful and appropriate discipline for violations of the statutes and rules.
3. To finalize the revision of administrative rules relating to bookkeeping, trust accounts and advertising.
4. To obtain statutory changes relating to young people under the age of 18 calling auctions under the supervision of certain registered auctioneers, and relating to advertising.
5. To enter into reciprocal licensing agreements with other states. We have an agreement with Texas at this time and are close to having an agreement with a few other states.
6. To continuously monitor the types of complaints we receive and to study the need for new regulations which properly address problems and improper behavior. You'll find a good example of this process when you read the article on Bidding By Sellers on page 2.

### **Disciplinary Actions**

TAP ENTERPRISES, INC.

ROBERT L. CUMMINGS, PRESIDENT

OLATHE, KS

SUSPEND ONE YEAR

Made a material misrepresentation in an application for an auction company registration by answering "no" to a question concerning pending disciplinary action and failed to disclose licensure in North Carolina. Violated a number of North Carolina's rules relating to the practice in that state. Effective 11/10/98. Sec. 480.24(2)(a)(b), Stats. RL 126.02(2). Case #LS9808261AUC.

Department of Regulation and Licensing  
Auctioneers and Auction Companies  
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## Telephones

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is:

**(608) 266-5511**

After dialing this number you are asked to press 1, 2, 3 or 4. For the following requests, please press extension numbers as noted:

<b>Application Form</b>	<b>Ext. 11</b>
<b>Complaints Against Licensees</b>	<b>Ext. 12</b>
<b>Verification of Licensure &amp; Name/Address Changes</b>	<b>Ext. 21</b>
<b>Application Processing &amp; Requirements</b>	<b>Ext. 43</b>

**Fax Number** (608) 267-3816

## Board Meetings

Usually the 4th Monday of each month.

**Requests for verifications to other states must be in writing.** The cost is \$10. Please make out check or money order to the Department of Regulation and Licensing.

## Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>  
Send comments to [dorl@drl.state.wi.us](mailto:dorl@drl.state.wi.us)

## Wisconsin Statutes and Code

Copies of the "Statutes and Administrative Code Relating to the Practice of Auctioneers and Auction Companies" can be ordered from the Department.

Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated April, 1997.

## Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

**WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

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